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| **Interim Order Decision (2)** |
| Site visit made on 15 May 2023 |
| **by J Burston BSc (Hons) MA MRTPI AIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 24 July 2023** |

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| **Order Ref: ROW/3253424** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The West Sussex County Council (Chichester – No 1 (Walberton and Arundel: Addition of a Restricted Byway and Upgrade of Public Footpath 342 to a Public Bridleway) Definitive Map Modification Order 2019.
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| * The Order is dated 19 November 2019 and proposes to modify the Definitive Map and Statement for the area by adding a Restricted Byway and upgrading a footpath to bridleway as shown in the Order plan and described in the Order Schedule.
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| * The Order was the subject of an interim decision dated 3 March 2022 in which the Inspector proposed to confirm the Order subject to modifications which required advertisement.
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| **Summary of Decision: The Order is proposed for confirmation subject to the modifications set out in the Formal Decision which require advertising.** |
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Procedural Matters

1. I made an unaccompanied site inspection on Monday 15 May 2023 when I was able to walk the Order route.
2. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map at Annex A.
3. The effect of the Order, if confirmed with the modifications that were previously proposed would be to:
4. in the Schedule, Part I, amend the description of the public right of way to be upgraded to read: “*And the upgrade, to a bridleway, of that part of footpath 342 from its commencement (grid reference 498489, 106615) to where the path makes a junction with Priory Lane as shown on the order plan 10778 marked points B, C, D and E*.”
5. in the Schedule, Part II, amend the description of the bridleway to read “*A bridleway commencing at grid reference 498489 106615 and continuing in a generally easterly direction for a distance of approximately 1.8km to its junction with Priory Lane. Width: between 498489 106615 and 499349 106234 varying between 1.8 and 3.0 metres; between 499349 106234 and 500210 106317 varying between 3.0 and 3.6 metres narrowing to 2.4 metres at the stream crossing point; between 500210 106317 and 500311 106382 4.5 metres*.”.
6. in the Order plan, delete E – F – G.
7. In the Interim Decision (ID) dated 3 March 2022, it was proposed to confirm the Order subject to the modifications described in paragraph 3 above. As the modifications proposed in this ID would affect land not affected by the Order and remove part of the Order Route as submitted, it was required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications.
8. One objection was received following advertisement of the notice and deposit of the associated documents relating to the proposed modifications.
9. The Objector has drawn my attention to a drafting error which refers to an incorrect grid reference for Point B in Part I and Part II of the Order. I am satisfied that the mistake in the grid reference is not likely to have caused any prejudice because the Order map itself is clear as to the intention of the Order and can be remedied via the proposed modifications.

The Main Issues

1. With regard to the modifications proposed in the ID dated 3 March 2022, the main issues that now require consideration are:
2. whether the modifications proposed were justified, and.
3. whether there is any new evidence that has a bearing on the proposed modifications to the Order as submitted.

**Reasons**

1. As the objection questioned the justification for the proposed modifications and introduced some new evidence, I have reviewed all the evidence now available.

**Documentary evidence**

*Ordnance Survey (‘OS’) maps*

1. The Objector to the Modification Order suggests that the historic alignment of footpath 342 differs from that shown on the Order Map. He has submitted the current OS map, which shows the line of the footpath as depicted on the definitive map and has overlaid this with the OS 1899 6-inch scale First Revision map.
2. The Objector contends that the historic OS mapping shows the route of the footpath (between points B - C on the Order Map) as depicting a more direct alignment. It is also submitted that this route is also consistently shown on the OS maps for 1900, 1930 and 1949. The Applicant also concurred with the Objector that the route historically followed the alignment set out on the OS Mapping.
3. I have considered the OS maps and I find that they depict the historic evolution of the Order Route. I agree with the Objector that the early OS maps show a route running in a more broadly east to west direction between points B – C, rather than the current right-handed ‘dog leg’. This is also shown on other documentary evidence such as the Yeakell and Gardner extract map.
4. Whilst there maybe a number of reasons why Footpath 342 was aligned along the route set out in the definitive map, I have no evidence relating to this before me. In any event, it is incumbent on me to create an accurate definitive map and statement and therefore, I propose to modify the alignment of the Order route between B – C.
5. Furthermore, given the findings set out in the ID at paragraph 39 that “*the evidence adduced is sufficient to demonstrate, on a balance of probabilities, that a public bridleway subsists over B – E…”*, the entire length of Footpath 342 should be upgraded to the status of a bridleway.
6. Accordingly, if the Order was confirmed a new section of bridleway would be created and the proposed alignment and upgrade of Footpath 342 would also be realised.

*Other Documents*

1. On balance, it is my view that all the other documentary evidence before me do not in themselves necessarily indicate that the Order route is aligned in a similar fashion to the OS Mapping, but neither do they contain evidence inconsistent with my conclusion.

*Conclusions regarding Documentary Evidence*

1. Overall, on the balance of probabilities, it is my view that the documentary evidence indicates that the Order route between B – E was a public bridleway, with the addition of an additional section of bridleway, aligned broadly east to west, as described in the modifications set out below.

**Width**

1. As set out in the ID no widths have been specified for those parts of the Order route to be upgraded from footpath to bridleway. The published guidance is that where a width is absent, the Order should be modified to include details of the width of the Order route.
2. The Objector states that the widths set out in the ID are not sufficient to allow users to pass and repass. In this respect he has referred to the Planning Inspectorates Advice Note 16 ‘Widths on Orders’ which states at paragraph 4.2 that “*Determination of the width will, if not defined by any inclosure award, physical boundary or statute, be based on evidence provided during the confirmation process, or, where there is no such clear evidence, the type of user and what is reasonable.”*
3. The applicant has completed her own survey of the width of the Order Route, during January 2023, which has confirmed that the average width between points B – C is approximately 3.0 metres and between points C – E is approximately 4.0 metres. Whilst I understand the Objector’s concerns, the route on the ground as I observed on my site visit does contain some pinch points. Therefore, I find greater certainty adopting the Applicant’s measurements, which updates those taken by the Council in 1984. Accordingly, these measurements will be reflected in my modifications as set out below.

**Overall conclusion**

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should be proposed for confirmation with modifications.

**Formal Decision**

1. I propose to confirm the Order subject to the following modifications:
2. in the Schedule, Part I,

Amend the ‘description of path or way to be added’

*“A restricted byway from east of Binsted Church (grid reference 498263 106033) having an average width of 5.8 metres and running in an easterly direction for approximately 280 metres to the beginning of Footpath 342 (grid reference 498515 , 106143) as shown on the Order Plan 01778 marked points A to B.”*

Add ‘description of path or way to be added’

“A bridleway from the upgraded *Footpath 342 (grid reference 498941 , 106181) having an average width of 5.0 metres running in an easterly direction for approximately 160 metres to the edge of the woods (grid reference 499070 , 106189). From this point the path runs in a north easterly direction for approximately 115 metres, where it re-joins the upgraded Footpath 342 (grid reference 499178 , 106231).”*

Amend the ‘description of the public right of way to be upgraded’ to read:

*“And the upgrade, to a bridleway, of that part of footpath 342 from its commencement (grid reference 498515 , 106143) to Priory Lane as shown on the order plan 10778 marked points B, C, D and E.”*

1. in the Schedule, Part II,

Amend the description of the Restricted Byway to read:

“From east of Binsted Church *(grid reference 498263 106033) having an average width of 5.8 metres and running in an easterly direction for approximately 280 metres.”*

Amend the description of the bridleway to read:

*“A bridleway commencing at grid reference 498515 , 106143 and continuing in a generally easterly direction for a distance of approximately 1.8km to its junction with Priory Lane. Width: between 498515 , 106143 and 499359 , 106230 of approximately 3.0 metres; between 499359 , 106230 and 500311 , 106382 4.5 metres.”.*

Add a description of the bridleway to read:

1. “A bridleway from the upgraded *Footpath 342 (grid reference 498941 , 106181) having an average width of 5.0 metres running in an easterly direction for approximately 160 metres to the edge of the woods (grid reference 499070 , 106189). From this point the path runs in a north easterly direction for approximately 115 metres, where it re-joins the upgraded Footpath 342 (grid reference 499178 , 106231).”*
2. in the Order plan add the route from grid reference *498941 , 106181* running east to grid reference *499070 , 106189* to re-join the upgraded Footpath 342 at grid reference *499178 , 106231*.
3. in the Order plan, delete E – F – G.
4. Since the Order as proposed to be confirmed would both ‘show a way not shown’ and ‘not show a way shown’ in the Order as submitted, I am required by virtue of Paragraph 8 (2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

J Burston

**Inspector**

**Annex A – Order Plan showing modification.**

